

48A C.J.S. Judges § 247

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Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

C. Grounds for Disqualification

1. In General

b. Bias or Prejudice

(1) In General

§ 247. Generally

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West's Key Number Digest

West's Key Number Digest, [Judges](#)  49, 49(1)

Under various constitutional or statutory provisions, bias or prejudice may be a ground for disqualification of a judge.

Judicial impartiality is the hallmark of the American system of justice.¹ Although it has been held, in the absence of statutory provision, that bias or prejudice on the part of a judge, which is not based on interest, does not necessarily disqualify the judge,² generally speaking, with respect to grounds for disqualification, a litigant is entitled to a trial before a judge who is not biased or prejudiced.³ Disqualification of a particular judge for bias or prejudice, although not technically required by the circumstances, is sometimes proper in order to dispel any thought or suspicion that the litigants may not be receiving impartial justice.⁴ The right to a judge free from bias or prejudice is based on the Due Process Clause of the Federal Constitution,⁵ and on the right to a fair trial,⁶ rather than on the Sixth Amendment to the Constitution.⁷

Apart from disqualification arising from the basic right to a fair trial, bias or prejudice may be ground for disqualification of a judge by reason of specific constitutional or statutory provisions.⁸ Such provisions apply both to criminal and civil cases.⁹ The right of disqualification for bias is in derogation of common law,¹⁰ and some authorities adopt a strict construction of statutes providing for disqualification on the ground of bias or prejudice¹¹ even though such provisions are remedial in nature.¹² Other authorities hold that such provisions should be liberally construed.¹³ It has also been stated that courts must apply with

restraint statutes authorizing disqualification of a judge due to bias.¹⁴ Only in the most extreme cases of bias or prejudice is the disqualification of a judge constitutionally required.¹⁵

If the requisite bias or prejudice exists, it is immaterial what caused it¹⁶ or whether it was warranted or unwarranted.¹⁷ The appearance as well as the actuality of partiality will suffice to constitute proof of bias sufficient to warrant disqualification.¹⁸ Even in the absence of actual bias, a judge must disqualify him- or herself in any proceeding in which the judge's impartiality might reasonably be questioned.¹⁹

Accordingly, recusal is required whenever there is substantial doubt as to a judge's ability to preside impartially,²⁰ even though the judge is not conscious of any bias or prejudice,²¹ or the judge personally believes him- or herself to be unprejudiced, unbiased, and impartial.²² The test is whether a reasonable person, knowing all the circumstances, would have a reasonable basis for doubting the judge's impartiality²³ or whether the alleged facts would create in a reasonably prudent person a well-founded fear of not receiving a fair and impartial trial.²⁴

Under some decisions, even if actual bias or prejudice is shown, it would not be grounds for disqualification but would only be reviewable on appeal on a showing that it had unjustly affected the result.²⁵ So, although the judge's prejudice may not constitute a ground for disqualification, if the charge is made and the facts alleged indicate the existence of prejudice, the appellate court will carefully scrutinize the record to see that no injustice has been done the complaining party.²⁶

In the absence of actual bias or prejudice, a judge has the right and duty to hear a case to its conclusion,²⁷ and the judge should not use the test for disqualification to avoid sitting on difficult or controversial cases.²⁸ The mere fact that a complaint has been made against a judge alleging the judge is biased and cannot be impartial does not require automatic disqualification or recusal by the judge.²⁹ Nevertheless, judges have an ethical duty to disqualify themselves from a matter whenever they have a personal bias or prejudice concerning a party appearing before them.³⁰

CUMULATIVE SUPPLEMENT

Cases:

District judge was not required to recuse herself in former professor's discrimination action against university due to fact that she had undisclosed dating relationship with tenured professor, even if that professor decided not to participate in bargaining unit and one of his relatives received poor grade in plaintiff's class, where there was no evidence that professor was involved in any way in plaintiff's tenure review or had any interest in litigation's outcome. 28 U.S.C.A. § 455; Ohio Code of Jud.Conduct, Canon 3(C)(1). *Ragozzine v. Youngstown State University*, 783 F.3d 1077 (6th Cir. 2015).

Disqualification under the statute requiring a judge to disqualify himself to avoid an appearance of partiality is appropriate only where the reasonable person, were he to know all the circumstances, would harbor doubts about the judge's impartiality; in reviewing a judge's decision not to disqualify himself, an appellate court must ask how the facts would appear to a well-informed, thoughtful, and objective observer, rather than the hypersensitive, cynical, and suspicious person, with the reasonable observer not being the judge or even someone familiar with the judicial system, but rather an average member of the public. 28 U.S.C.A. § 455(a). *Mathis v. Huff & Puff Trucking, Inc.*, 787 F.3d 1297 (10th Cir. 2015).

District judge's denial of federal prisoner's motion for transcripts, which he filed to assist in preparation of second motion to vacate, set aside, or correct his sentence, did not in itself provide reasonable grounds for questioning judge's impartiality, and absent showing of any personal, extrajudicial bias that would cause lay observer to doubt judge's impartiality, judge did not

abuse his discretion in denying prisoner's recusal motion. 28 U.S.C.A. §§ 144, 455. *United States v. Adamson*, 681 Fed. Appx. 824 (11th Cir. 2017).

In keeping with the aim of promoting confidence in the judiciary by avoiding even the appearance of impropriety whenever possible, recusal turns on whether an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge's impartiality. *In re Moody*, 755 F.3d 891 (11th Cir. 2014).

No reasonable person knowing that remittitur of \$900,000 granted to pharmacy by judge was for death benefits for pharmacist who was still alive would have questioned judge's impartiality in the decision, and thus vacatur was not required after judge disclosed that she had inadvertently purchased stock in pharmacy, where judge had made no other substantive decisions while holding stock in pharmacy. 28 U.S.C.A. §§ 455(a), 455(b)(4). *King v. CVS Health Corporation*, 198 F. Supp. 3d 1277 (N.D. Ala. 2016).

The test for disqualification or recusal of a judge is an objective one and asks whether, from the perspective of the average person on the street, a reasonable man knowing all of the circumstances would harbor doubts about the judge's impartiality. *Arkansas State Conference NAACP v. Arkansas Board of Apportionment*, 578 F. Supp. 3d 1011 (E.D. Ark. 2022).

Statute requiring disqualification if the judge's impartiality might reasonably be questioned seeks to balance two competing policy considerations: (1) that courts must not only be, but seem to be, free of bias or prejudice, and (2) the fear that recusal on demand would provide litigants with a veto against unwanted judges. 28 U.S.C.A. § 455(a). *Arkansas Teacher Retirement System v. State Street Bank and Trust Company*, 404 F. Supp. 3d 486 (D. Mass. 2018).

Knowledgeable, reasonable person could not question impartiality of judge on basis that he had organized, promoted, and moderated panel discussing issues concerning prisons in context of particular prisoner that were of public concern, and thus recusal was not required; issues discussed by panel were related only at high level of generality to death penalty case over which judge presided, and he repeatedly stated that he was not expressing his own opinions and that he did not agree with everything panelists said; even if panel was one-sided, judge was equally available to address other litigation constituency. 28 U.S.C.A. § 455(a). *United States v. Sampson*, 148 F. Supp. 3d 75 (D. Mass. 2015).

Judges have an affirmative duty to recuse themselves when a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned. 28 U.S.C.A. §§ 144, 455. *Lasko v. American Bd. of Surgery*, 47 F. Supp. 3d 1122 (D. Nev. 2014).

Bankruptcy judge did not have to recuse himself, pursuant to statute requiring judge's recusal whenever he or she "has a personal bias or prejudice concerning a party," where no reasonable, well-informed, thoughtful and objective person could not conclude from careful review of entire record that judge had some personal animus or malice toward Chapter 7 debtor, let alone that such bias was established by compelling evidence. 28 U.S.C.A. § 455(b)(1). *In re Damerau*, 525 B.R. 799 (Bankr. S.D. Fla. 2015).

Disqualification of a judge is required where, given the facts, a reasonable person might question a judge's impartiality. *Heber v. Heber*, 330 P.3d 926 (Alaska 2014).

Appellate court need not find actual bias in order to invoke statute providing for disqualification of trial judge in interest of justice. Cal. Civ. Proc. Code § 170.1(c). *People v. LaBlanc*, 238 Cal. App. 4th 1059, 189 Cal. Rptr. 3d 886 (4th Dist. 2015).

Laws requiring disqualification of biased judge are intended to secure fair, impartial trial for litigants. Colo. Code of Judicial Conduct, Rule 2.11(A). *In re People In Interest of A.P.*, 2022 CO 24, 526 P.3d 177 (Colo. 2022).

A judge is required to undertake a two-part analysis on a motion to recuse; the judge must be satisfied as a matter of subjective belief that he or she can proceed to hear the cause free of bias or prejudice concerning that party, and second, if the judge subjectively believes that she is without bias, she must also find that there is no appearance of bias sufficient to cause doubt as to the judge's impartiality. [Butler v. State](#), 95 A.3d 21 (Del. 2014).

Trial judge's actions in series of related tobacco cases created appearance of impropriety which so permeated proceeding as to entitle tobacco companies to writ of prohibition, disqualifying judge; judge disclosed ex parte communication with party at pre-trial status conference, but did not provide details of communication, then sua sponte disqualified himself from four of the 16 related tobacco cases, and directed that one of the cases be transferred to a specific judge and tried three days later. West's F.S.A. Code of Jud.Conduct, Canon 3B(7). [R.J. Reynolds Tobacco Company v. Alonso](#), 268 So. 3d 151 (Fla. 4th DCA 2019).

Drivers established an objectively reasonable fear that they would not receive a fair and impartial trial before a particular judge in their traffic offense cases; drivers alleged that judge had instructed the hearing officer to be less lenient on drivers, that judge believed drivers in the county to be aggressive, that judge inquired as to why counsel had requested judge's e-mails, and that, soon after this, counsel's clients' cases were transferred to this judge's docket. [Pena v. State](#), 259 So. 3d 223 (Fla. 2d DCA 2018).

Fact that trial judge had previously been in a serious automobile accident involving defendant's uncle did not demonstrate personal bias or prejudice requiring judge to sua sponte recuse himself from presiding over prosecution for aggravated assault and armed robbery; there was nothing to indicate that judge was aware that person with whom he was in accident over 10 years earlier was related to defendant, and defendant's uncle had nothing to do with the case at hand. Ga. Code of Jud. Conduct, Canon 3(E)(1)(a). [Shelton v. State](#), 350 Ga. App. 774, 830 S.E.2d 335 (2019).

Mandatory disqualification of a judge requires a showing of a personal, individual bias against the litigant. [Zavodnik v. Harper](#), 17 N.E.3d 259 (Ind. 2014).

To demonstrate that a trial judge should have recused himself or herself, the moving party must show that a reasonable person who knew the circumstances of the case would question the judge's impartiality under an objective standard of reasonableness, even though no actual bias or prejudice was shown. Neb. Code of Jud. Conduct § 5-302.11(A)(1). [Timothy L. Ashford, PC LLO v. Roses](#), 313 Neb. 302, 984 N.W.2d 596 (2023).

A judge who initiates or invites and receives an ex parte communication concerning a pending or impending proceeding must recuse himself or herself from the proceedings when a litigant requests such recusal. [State v. Lierman](#), 305 Neb. 289, 940 N.W.2d 529 (2020).

When making a recusal decision, a judge must determine whether a reasonable person could, on the basis of all the facts, reasonably question the judge's impartiality. [Datz v. Dosch](#), 2014 ND 102, 846 N.W.2d 724 (N.D. 2014).

State's claim for trial judge's recusal was specious and wholly without merit, as State failed to show any evidence of judicial bias or prejudice with respect to State's motions to vacate defendant's guilty plea, reconsider sentence, and for judge's recusal; there was no indication that ex parte communications took place between judge and defendant's counsel without State's consent, and State's claims involving the court reporter and judge's alleged use of presumption of innocence failed to prove the judge was partial, biased, or prejudiced against the State in any way. [State v. Quinn](#), 430 S.C. 115, 843 S.E.2d 355 (2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—*In re Spirtos*, 298 B.R. 425 (Bankr. C.D. Cal. 2003).
- 2 Ala.—*Conwell v. Conwell*, 56 Ala. App. 188, 320 So. 2d 694 (Civ. App. 1975).
- 3 N.J.—*State v. Perez*, 356 N.J. Super. 527, 813 A.2d 597 (App. Div. 2003).

Constitutional guaranty of justice without prejudice as insuring trial before unbiased and unprejudiced judge, see C.J.S., Constitutional Law § 2161.
- 4 Fla.—*State v. Steele*, 348 So. 2d 398 (Fla. 3d DCA 1977).

Tenn.—*Lackey v. State*, 578 S.W.2d 101 (Tenn. Crim. App. 1978).
- 5 U.S.—*U.S. v. Sciuto*, 531 F.2d 842 (7th Cir. 1976); *U.S. v. Conforte*, 457 F. Supp. 641 (D. Nev. 1978), judgment aff'd, 624 F.2d 869 (9th Cir. 1980).

Due process of law as requiring fairness in judicial proceedings, generally, see C.J.S., Constitutional Law § 1494.
- 6 Conn.—*State v. Martin*, 77 Conn. App. 778, 825 A.2d 835 (2003).

Fla.—*Ennis v. Ennis*, 855 So. 2d 229 (Fla. 5th DCA 2003).
- 7 U.S.—*Morgan v. Neal*, 325 F. Supp. 1196 (E.D. Tenn. 1970).
- 8 U.S.—*Town of East Haven v. Eastern Airlines, Inc.*, 293 F. Supp. 184 (D. Conn. 1968).

Wash.—*State ex rel. Tonasket v. Cottrell*, 92 Wash. 2d 606, 599 P.2d 1295 (1979).
- 9 Cal.—*Blackman v. MacCoy*, 169 Cal. App. 2d 873, 338 P.2d 234 (2d Dist. 1959).

Fla.—*Williams v. State*, 143 So. 2d 484 (Fla. 1962).
- 10 N.M.—*State ex rel. Miera v. Chavez*, 1962-NMSC-097, 70 N.M. 289, 373 P.2d 533 (1962).
- 11 U.S.—*U.S. v. Moore*, 405 F. Supp. 771 (S.D. W. Va. 1976).

Arraignment
A statute providing for recusal of a judge upon an affidavit of bias does not apply to an arraignment.

S.D.—*State v. Winckler*, 260 N.W.2d 356 (S.D. 1977).
- 12 U.S.—*Freed v. Inland Empire Inc Co*, 174 F. Supp. 458 (D. Utah 1959).
- 13 U.S.—*U.S. v. Ritter*, 540 F.2d 459 (10th Cir. 1976).

Conn.—*State v. Schafer*, 5 Conn. Cir. Ct. 669, 260 A.2d 623 (App. Div. 1969).
- 14 Cal.—*In re Scott*, 29 Cal. 4th 783, 129 Cal. Rptr. 2d 605, 61 P.3d 402 (2003).
- 15 U.S.—*Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 106 S. Ct. 1580, 89 L. Ed. 2d 823 (1986).
- 16 Ky.—*Stamp v. Com.*, 195 Ky. 404, 243 S.W. 27 (1922).

R.I.—*State v. Nunes*, 99 R.I. 1, 205 A.2d 24 (1964).
- 17 Mo.—*State ex rel. McAllister v. Slate*, 278 Mo. 570, 214 S.W. 85, 8 A.L.R. 1226 (1919).

Ga.—*Phillips v. State*, 275 Ga. 595, 571 S.E.2d 361 (2002).

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